

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2255.05
COMPLAINT INVESTIGATOR: Joe Bear
DATE OF COMPLAINT: May 11, 2005
DATE OF REPORT: June 8, 2005
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: June 20, 2005

COMPLAINT ISSUES:

Whether Gary Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to place the student in a day treatment program.

FINDINGS OF FACT:

1. The Student has been identified as having an emotional disability and has been determined eligible for special education and related services.
2. According to the School, and confirmed by the educational surrogate parent, the Student's Case Conference Report/IEP dated January 4, 2005, contains an error on the first page. The page indicates that the Student is undergoing a change of placement from full-time services for the emotionally handicapped to day treatment, or a private treatment facility. The School stated that the CCC had not decided this, but that a recording error was made by a social worker. The School also stated that the Student's case manager had wanted private day treatment for the Student, but other CCC members thought the Student needed more adjustment time due to recently moving into a new foster home.
3. The IEP (dated January 4, 2005), in a section on least restrictive environment (LRE), indicates that the CCC considered and rejected both part-time special education and services in a public separate school. Full-time special education is marked as the selected placement. The LRE section states that "the Student's caseworker is looking into a private daycare program."
4. The social worker said that the CCC agreed at the January 4, 2005, CCC meeting that the case manager would check out the possibility of private day treatment for the Student, if his agency had funds available. The School did not agree to pay for private treatment, and if it had wanted to pursue a separate facility for the Student, would have reviewed treatment options through the school system first. The educational surrogate parent confirms that the CCC did not decide to provide day treatment at the January meeting.
5. The Functional Behavior Assessment Report of January 4, 2005, supports the contention that day treatment was not agreed upon. It states, in part, that the Student "seems to need more supervision and one-on-one instruction. We should consider a day treatment program."
6. The social worker said that no communication was sent out regarding the error on the first page of the January 4, 2005, IEP because the committee members understood what actions were to be taken.

7. The case manager requested funding for private day treatment from his agency, and the request was rejected.
8. The CCC met on May 23, 2005, and agreed to provide day treatment services to the Student at another school within the district. The LRE page of the May IEP indicates that the CCC agreed on a placement of a public separate school due to "continued lack of self-control, impulsivity, and off-task behavior."

CONCLUSIONS:

Findings of Fact #2 through #6 indicate the School's position that, at the CCC meeting on January 4, 2005, the decision to pursue day treatment for the Student, either publicly or privately, had not yet been made. Findings of Fact #7 and #8 indicate that private funding was rejected, and that the School subsequently agreed, at the May 23, 2005, CCC meeting, to provide day treatment services at a public facility. Although CCC members may have understood what was agreed upon at the January CCC meeting (even though there was an error on the first page of the IEP, as cited in Findings of Fact #2 and #6), the IEP is used by other special educators, general educators, and related service providers who were not at the CCC meeting, to plan and provide services. An uncorrected error in the IEP causes confusion, as is illustrated in this case. Therefore, a violation of 511 IAC 7-27-7(a) is found.

The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Gary Community School Corporation shall provide an assurance statement that IEPs will be implemented as written, and that errors in IEPs will be corrected upon discovery. The School Corporation will also attach a statement to the IEP of January 4, 2005, explaining the error on the first page.

Documentation of compliance (consisting of the assurance statement, and the part of the revised IEP of January 4, 2005, that explains the error) shall be submitted to the Division by July 15, 2005.